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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1993

MITSUO SHIMIZU,
Petitioner,

VS.

CALIFORNIA SUPERIOR COURT, COUNTY OF SONOMA,

JUDITH BELLAH,
Real Party in Interest

On Writ of Certiorari to the California Court of Appeal, First Appellate District, Division 1

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Under *Kulko v. California Superior Court* (1978) 436 U.S. 84, may California lawfully exercise personal jurisdiction in a dissolution of marriage action over a defendant who is a citizen and resident of Japan, when the parties and their child resided together in Japan for the last nine years of their ten year marriage, and when the defendant has no significant connection with the State of California?

LIST OF PARTIES

The parties to the proceedings below were the petitioner, Mitsuo Shimizu.

The respondent before this Court is the California Superior Court, County of Sonoma. The real party in interest is Judith Bellah.

Petitioner has no parent companies, subsidiaries or affiliates to list pursuant to Rule 29.1.

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DECISION BELOW

The decision of the California court of appeal, first appellate district, division 1, denying Petitioner's petition for a writ of mandate and/or prohibition, is set forth in the Appendix to this Petition at A-1. The order of the California supreme court denying Petitioner's petition for review is set forth in the Appendix at A-2.

JURISDICTION

The California Supreme Court denied Petitioner's timely Petition for Review on November 24, 1993. Petitioner invokes the Court's certiorari jurisdiction under 28 U.S.C. section 1257 (3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment, United States Constitution:

> SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

California Code of Civil Procedure section 410.10:

> A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

STATEMENT OF THE CASE

This case raises important issues regarding the scope of personal jurisdiction in a family law case. The California trial court has assumed *in personam* jurisdiction in a dissolution of marriage action despite the fact that Petitioner ["Mr. Shimizu"] is not an American citizen and has not resided in the United States or California for over 10 years, the parties lived all but 8 months of their married life together in Japan, their one child was born and raised in Japan, and they own no real property, and only limited property, in California. At the time of the parties' separation in March, 1992 Real Party in Interest ["Ms. Bellah"] secretly left Japan for California with the parties' minor child, without informing Mr. Shimizu. By this unilateral action she created the jurisdictional conflict which has ensued.

The trial court's order exceeds the permissive constitutional boundaries of the exercise of personal jurisdiction, and it violates this Court's guidelines in the landmark decision of *Kulko v. California Superior Court*(1978) 436 U.S. 84. Mr. Shimizu asks the assistance of this Court to settle a fundamental issue of

continuing national importance in matrimonial law, and to remedy the injustice of the particular circumstances.

A. *Background.* Mr. Shimizu is a citizen and resident of Japan. He is not a citizen or resident of the United States. He maintains no home anywhere in the United States. He currently has a B-1 (short business trips) and B-2 (tourist) visa which permits him entry into the United States for limited periods of time. Ms. Bellah is a citizen of the United States and a resident of California.

B. *Marriage.* The parties were married on May 7, 1982 in California. They had lived together, in California, only for some months prior to the date of marriage.[1]

C. *Residence in Japan and Ms. Bellah's Departure for California.* In January, 1983, only eight months after their marriage, the parties together moved to Japan due to a transfer made by Mr. Shimizu's employer.[2] They resided in Japan for the next nine years.[3] The one child of their marriage, SARAH LICA

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[1] The parties stipulated at trial that Mr. Shimizu had lived in California from May 1980 to January 1983. Before that stay in California Mr. Shimizu had lived in California from June 1973 to August 1976. Mr. Shimizu had lived in New York from February 1977 to May 1980. All of these time periods preceded the parties' marriage, and the trial court did not rely on these facts when determining that California could exercise personal jurisdiction over Mr. Shimizu. [See also *Carrillo v. Carrillo* (R.I. 1987) 523 A.2d 439 (a defendant's minimum contacts under *Kulko* are measured from the time the defendant leaves the forum state)] Moreover, the parties further stipulated that at all other times Mr. Shimizu lived in Japan.

[2] The parties stipulated at trial that prior to their departure to Japan in 1983, "Husband informed Wife that his employer had informed him that Husband was to be transferred to Japan. At or about that time, Husband further informed Wife that, in the opinion of his supervisor, Husband and Wife could transfer back to the United States in three to five years." The trial court did not rely in its decision on these statements by Mr. Shimizu.

[3] In the trial court Ms. Bellah claimed that she and Mr. Shimizu had always agreed to return to California. Ms. Bellah produced no documen-

SHIMIZU, was born in Japan on August 9, 1984, and she lived in Japan with both parties for the next seven and a half years until March, 1992.[4] At that time Ms. Bellah left for California with Sarah Lica, without telling Mr. Shimizu that she planned to do so.[5]

D. *Mr. Shimizu's Limited Contacts with California.* Since 1983 Mr. Shimizu's contacts with California have been extremely limited. During the time that the parties were married and living in Japan, Mr. Shimizu travelled to California on only three occasions. In 1985 and 1990 he went to California on a business trip, and he accompanied Ms. Bellah in this State for only a few days. In 1988 he travelled to California for a brief trip relating to his business. At all other times during the marriage and since the date of separation Mr. Shimizu has not been in California.

In 1983, when the parties left for Japan, Mr. Shimizu maintained three bank accounts in California. He continued to maintain these accounts until approximately June, 1993, at which time he closed the two larger accounts. The parties stipulated at trial that the amount of money on deposit in the accounts in California totaled, at most, $60,000. Mr. Shimizu owns no real property in California, and he did not own any real property in this State or anywhere else in the United States during the marriage. All other assets which the parties accumulated during the marriage are in Japan; these other assets constitute the vast majority of the parties' holdings.

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tary evidence to substantiate her claim. In any event, a party's desire to return to a particular location does not constitute a substantial contact for the purposes of establishing personal jurisdiction.

[4] Sarah Lica is a citizen of both the United States and Japan.

[5] In the trial court Ms. Bellah claimed that Mr. Shimizu had been sexually molesting Sarah Lica. The trial court made no determination of the merits of Ms. Bellah's claim, nor did the trial court find that Ms. Bellah had acted with justification in leaving Japan with Sarah Lica and without informing Mr. Shimizu. Mr. Shimizu strongly denies Ms. Bellah's accusation that he sexually molested his daughter.

Mr. Shimizu's only other contact with California was that he continued to hold a valid California driver's license. He used the driver's license only during his three trips to California.

E. *Dissolution of Marriage Proceedings.* On April 12, 1993 Ms. Bellah filed a petition for dissolution of marriage in the Superior Court of California, County of Sonoma. On the same date she also filed an order to show cause for temporary visitation, child support, spousal support, attorney ' fees and costs. Ms. Bellah caused Mr. Shimizu to be served with process in Japan on June 12, 1993. Mr. Shimizu has never been served in California, and he has not generally appeared in the California action.

F. *Motion to Quash Proceedings.* On July 9, 1993 Mr. Shimizu filed a notice of motion to quash the summons and petition based on the lack of personal jurisdiction in California. On September 10, 1993 the trial court denied Mr. Shimizu's motion. In reaching his decision the judge relied principally on *Khan v. Superior Court* (1988) 204 Cal. App.3d 1168, a California state court of appeal decision which had distinguished and declined to follow *Kulko v. California Superior Court, supra*, 436 U.S. 84. The trial judge gave his reason for the ruling as follows:

> [T]he evidence shows that the husband did live in California for several years and was in fact married in California. His contacts with California for the past ten years have in fact continued, in this Court's opinion. He has visited here, I think, at least three times before the separation, I believe. He has maintained and continued to use his California driver's license, and he also has maintained three bank accounts which the parties have agreed have totaled $60,000 at least at some point before separation. So I think as in the *Khan* case which was cited to me, these contacts are sufficient to show purposeful availment of the privilege of conducting activities in California.

The trial judge also found that the bank accounts which the parties maintained during the marriage were transactionally re-

lated to the subject matter of the present action.[6] Furthermore, although the issue of the convenience of forum was not before the court in Mr. Shimizu's motion to quash, the trial judge found that California, rather than Japan, is an appropriate forum for the dissolution of marriage because Mr. Shimizu "is better able to absorb the cost of long distance litigation."[7] This finding is particularly surprising because no financial information was before the court; moreover, the "long distance litigation" that the trial court described was occurring solely because of Ms. Bellah's decision to leave Japan secretly with the parties' child.

G. *Court of Appeal and California Supreme Court Rulings.* On September 29, 1993 Mr. Shimizu filed a timely petition for writ of mandate and/or prohibition before the California court of appeal, which that court denied without opinion on October 13, 1993. On October 19, 1993 Mr. Shimizu filed a timely petition for review before the California supreme court, which that court denied without opinion on November 24, 1993.[8]

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[6] The trial judge stated: "The second requirement, I believe is that the plaintiff's cause of action arises out of the defendant's forum related contacts. I think that the California bank accounts are transactionally related to the subject matter of this action. Even if we assume the marital property is worth $400,000, which I kind of question, but even if we assume that, a $60,000 bank account, or roughly 15 percent of the marital property located in California is in my opinion more than a tangential relationship with this action. I think there is a transactional relationship with this action by reason of these bank accounts being in California and the amount thereof."

[7] The trial judge stated: "Finally, the Court is required, of course, to only exercise personal jurisdiction which comports with fair play and substantial justice. Even though Japan might be an alternate forum in this case, I think that the burden on the husband to litigate this case in California is much less than the burden would be on the wife to litigate this case in Japan, simply because I think the husband is better able to absorb the cost of long distance litigation. I think California does have an interest in providing a means of redress for its residents, particularly with respect to property within its borders."

[8] Although the order at bar is an interlocutory one, it completely resolves the federal claim under *Kulko v. California Superior Court,*

REASONS FOR ALLOWANCE OF THE WRIT

In *Kulko v. California Superior Court, supra*, 46 U.S. 84, the United States Supreme Court held that a State may exercise long-arm jurisdiction over a non-resident family law defendant only if the defendant's contacts with the State are both substantial and current. In the present case, the limited contacts between Mr. Shimizu and the State of California do not remotely meet this requisite standard. Instead, Ms. Bellah chose to bolster her position by unilaterally leaving the country of her marital residence and commencing proceedings in California, where Mr. Shimizu is neither a citizen nor a permanent resident. Justice should not require Mr. Shimizu to be haled into a California court in order to defend his family and financial rights.

The trial court relied on *Khan v. Superior Court, supra*, 204 Cal. App.3d 1168, a California state court of appeal decision which had declined to follow *Kulko*. When the Supreme Court decided *Kulko*, most family law practitioners believed that the standards for personal jurisdiction in a matrimonial case were finally settled. In fact, during the past fifteen years the confusion has become, if anything, even greater rather than before. Since the issuance of *Kulko*, myriad state court decisions have either followed the Supreme Court's mandate or have attempted to distinguish it based on the factual setting of the particular case. In light of the disparate and often conflicting results which have occurred in California and throughout the nation, the Supreme Court should grant certiorari to settle the scope of the *Kulko* rule.

Because *Kulko* and the California state court decision of *Khan* are seminal to the instant petition, a close examination of each decision is important.

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supra, 46 U.S. 84 and the 14th Amendment of the United States Constitution for the purposes of this proceeding. The Supreme Court has jurisdiction to review an interlocutory order when the federal claim has been finally decided, with further proceedings in the state court to come, but in which later review of the federal issue is unavailable, regardless of the outcome of the case. [*Pennsylvania v. Ritchie* (1987) 429 U.S. 469]

A. *Kulko.* In 1959 Ezra and Sharon Kulko married during Ezra's three-day stopover in California. At the time of the marriage, both parties were domiciliaries and residents of New York. After the marriage, the parties returned to New York to live. Their two children, Darwin and Ilsa, were born in New York.

1. *Separation.* The Kulkos separated in 1972, and Sharon moved to California. The parties subsequently reached a written separation agreement, which provided that the children would remain with Ezra during the school year but would spend school vacations with Sharon. Ezra agreed to pay Sharon $3,000 per year in child support for the periods when the children were in her care. After signing the agreement Sharon flew to Haiti and obtained a divorce decree there. She then returned to California.

2. *Movement of Children.* In 1973, before she was to leave New York to spend Christmas vacation with her mother, Ilsa told her father that she wanted to remain in California after her vacation. Ezra bought his daughter a one-way plane ticket, and she left for California. In 1976 Darwin called his mother and told her that he too wanted to live with her. Sharon sent him a plane ticket and he took up residence in California.

3. *Child support litigation.* Shortly after Darwin's arrival, Sharon commenced an action in California against Ezra. Among other requests, Sharon sought an increase in child support. Ezra specially appeared and moved to quash service of the summons on the ground that he was not a resident of California and lacked sufficient minimum contacts to warrant the imposition of personal jurisdiction. The trial court denied the motion.

The California supreme court affirmed the trial court's ruling, reasoning that Ezra had " 'purposely availed himself of the benefits and protections of the laws of California' by sending Ilsa to live with her mother in California." Although Ezra had not sent Darwin to California, the state supreme court concluded that it was " 'fair and reasonable for [Ezra] to be subject to personal jurisdiction for the support of both children, where he has committed acts with respect to one child which confers [*sic*] personal jurisdiction and has consented to the permanent residence of the other child in California.' "

The United States Supreme Court, however, reversed the California supreme court.

4. *General principles.* Justice Marshall wrote that the Due Process Clause of the Fourteenth Amendment operates as a limitation on the jurisdiction of state courts to enter judgments affecting rights or interests of nonresident defendants. The existence of personal jurisdiction, in turn, requires reasonable notice and "a sufficient connection between the defendant and the forum State to make it fair to require a defense of the action in the forum."

Under the traditional test of *International Shoe Co. v. Washington* (1945) 326 U.S. 310, the cardinal inquiry is whether a defendant has "certain minimum contacts with [the forum State] such that maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'." While the interests of the plaintiff and forum state are relevant considerations, "an essential criterion must always be whether the 'quality and nature' of the defendant's activity is such that it is 'reasonable' and 'fair' to require him to conduct his defense in that State."

The Supreme Court observed that the "minimum contacts" test is a flexible one, which must be carefully analyzed according to the facts of each individual case:

> Like any standard that requires a determination of "reasonableness," the "minimum contacts" test of *International Shoe* is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite "affiliating circumstances" are present. . . . We recognize that this determination is one in which few answers will be written in black and white." The greys are dominant and even among them the shades are innumerable.". . . But we believe that the California Supreme Court's application of the minimum-contacts test in this case represents an unwarranted extension of *International Shoe* and would, if sustained, sanction a result that is neither fair, just, nor reasonable.

5. *Disclaimers by California Supreme Court.* Justice Marshall wrote that the California supreme court had properly dis-

claimed reliance on the following contacts between Ezra and California: (1) Ezra's stop-over in California in 1959 at the time of the marriage; (2) Ezra's subsequent stop-over in Korea in 1960; (3) the fact that Ezra had been married during one of his two visits; and (4) the fact that Ezra had previously sent the children to California for visitation three months each year. Such ancient and limited contacts were insufficient to justify California long-arm jurisdiction.

6. *Purposeful act.* The opinion then quotes *Hanson v. Denckla* (1958) 357 U.S. 235, for the rule that "there must be some act by which the defendant purposefully avails [him]self of the privilege of conducting activities within the forum State. . . ." This Court ruled that the California supreme court had improperly found, as purposeful acts, "Ezra's agreement that Ilsa could live in California with her mother, and his act of sending her to California for that purpose."

B. *Analysis under Kulko.* In the present case the trial court found that Mr. Shimizu had sufficient minimum contacts with California because he held a California drivers' license, had maintained three bank accounts in the State, and had briefly visited California on three occasions during the marriage at the behest of his employer (a Japanese company). These contacts are manifestly insufficient to confer long-arm jurisdiction under the *Kulko* criteria. Mr. Shimizu did not engage in any significant purposeful acts by which he availed himself of the privilege of conducting business in California. He did not derive any meaningful benefits from his sparse association with this State. The isolated nature and quality of the connections which the trial judge recited as the bases for his decision cannot justify the assertion of jurisdiction.[9]

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[9] The record also contains evidence that Ms. Bellah travelled to California several times on her own for visits. The Supreme Court has held that a plaintiff's unilateral activity in the forum state does not constitute a contact for the purposes of personal jurisdiction. [*Helicopteros Nacionales de Colombia v. Hall* (1984) 466 U.S. 408] Moreover, the connections between the defendant and the State must be

The fact that Mr. Shimizu had a California driver's license is insufficient for personal jurisdiction, since a non-resident can hold a license; furthermore, the license was unrelated to any issue in the parties' dissolution of marriage. [See, e.g., *Modlin v. Superior Court* (1986) 176 Cal. App.3d 1176 (New York resident's license to practice medicine in California was insufficient contact to justify personal jurisdiction in family law matter)][10] The three brief trips which Mr. Shimizu made to California are also insufficient and irrelevant; all of them were for business purposes and lasted only a few days each. [See, e.g., *Judd v. Superior Court* (1976) 60 Cal. App.3d 38; *Modlin v. Superior Court, supra*, 176 Cal. App.3d 1176 (business activities in California must be related to issues in the marital action)] The fact that Mr. Shimizu chose to spend a few days with his wife on two of the trips does not convert the visits to meaningful contacts with the State of California. Finally, although Mr. Shimizu's maintenance of three bank accounts in California might, in combination with other contacts, be a basis for the assertion of personal jurisdiction, the bank accounts by themselves are insufficient. [See *Schaffer v. Heitner* (1977) 433 U.S. 186] Otherwise, the myriad foreign residents who hold assets in California, and have no other significant connection, could be sued in this State.[11] In the present case the bank accounts constituted a small fraction of the parties' marital estate.

What makes this matter particularly compelling is the fact that Mr. Shimizu is a citizen and resident of Japan. He is not a citizen or resident of the United States. The United States Supreme

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determined as of the date of the dissolution of marriage petition. [*Tarvin v. Tarvin* (1986) 187 Cal. App.3d 56]

[10] In *Roderick v. Roderick* (Tenn. 1989) 776 S.W.2d 533 the Court held that a spouse's marriage in the forum state, and his holding of a driver's license, did not constitute sufficient contacts under *Kulko* to justify jurisdiction.

[11] Some courts have held that a family law court has *in rem* jurisdiction to divide marital assets located within the forum state. [See, e.g., *Lagerway v. Lagerway* (Alaska 1984) 681 P.2d 309] The location of assets within the state does not, however, confer personal jurisdiction over the defendant.

Court has held that the a defendant like Mr. Shimizu who is a foreign national incurs "unique burdens" which should have significant weight in assessing the reasonableness of a State court's exercise of personal jurisdiction. [*Asahi Metal Industry Co., Ltd. v. Superior Court*(1987) 480 U.S. 102] Ms. Bellah, who carried the burden of proof to with respect to the Court's personal jurisdiction, presented no evidence that she is unable to vindicate her marital claims in Japan, or that the Japanese Courts will treat her unfairly.

C. *California decisions following Kulko.* Following *Kulko* the California state courts of appeal have on several occasions considered the question of personal jurisdiction in a family law proceeding. In many of the decisions the appellate courts have found that insufficient connections existed between the defendant and California to justify personal jurisdiction. [See, e.g., *McArthur v. Superior Court* (1991) 235 Cal. App.3d 1287; *Bartlett v. Superior Court* (1978) 86 Cal. App.3d 72; and *Hoerler v. Superior Court* (1978) 85 Cal. App.3d 533] These authorities are directly applicable in the present petition.[12]

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[12] In *Bartlett*, the county sued a man for reimbursement of welfare assistance paid to a mother for the support of a minor child. The man had been in California on Navy business, and he had given the mother money for her expenses. Three months later he traveled to California on Navy business and spent four or five days at a motel in Santa Barbara. The Court of Appeal quashed the county's attempt to exercise long-arm jurisdiction over the man.

In *Hoerler*, the parties were married in California, had children here, and lived in California for fourteen years before they left for the state of Washington. The parties dissolved their marriage in Washington, and the former wife then returned to California, where she instituted a legal action against her former husband. The trial court denied the former husband's motion to quash the service of process, but the Court of Appeal issued a peremptory writ of mandate, holding that "jurisdiction cannot be invoked on the record before us."

In *McArthur*, the Court of Appeal held that a father's presence in California solely for the purpose of visitation, and his borrowing of his wife's credit cards in California for cash needs, could not justify personal jurisdiction under the *Kulko* standard.

In other decisions the appellate courts have sustained personal jurisdiction notwithstanding the dictate of *Kulko*, when the defendants' contacts were sufficiently significant to meet the standards of due process. As the court of appeal wrote in *McArthur v. Superior Court, supra*, 235 Cal. App.3d 1287, however, "[s]uch contacts generally include either residence for periods of time in California (e.g., *In re Marriage of Hattis* [1987] 196 Cal. App.3d 1162 . . .), birth of the children here (e.g. *Bergan v. Bergan* (1981) 114 Cal. App.3d 567 . . .), or abandonment of the family here. (E.g., *In re Marriage of Lontos*(1979) 89 Cal. App.3d 61 . . . ; *McGlothen v. Superior Court* (1981) 121 Cal. App.3d 106 . . .) None of these contacts is applicable to the current factual setting.

D. *Khan.* The decision upon which the trial judge relied in denying Mr. Shimizu's motion to quash was *Khan v. Superior Court, supra*, 204 Cal. App.3d 1168. Nevertheless, the contacts which existed in *Khan* between the husband and California were far more substantial and continuous than the very limited connections in the case at bar. Thus, *Khan* does not justify the trial court's ruling.

1. *Facts in Khan.* In 1957 the parties married in a civil ceremony in North Carolina. They then moved to California, where they solemnized their marriage in a religious ceremony. The family settled in Southern California, where the wife taught school. The parties opened a joint checking account at a San Francisco bank, and the following year the wife opened a separate account at a credit union.

2. *Marital life in California.* From 1958 to 1961 the husband completed his Ph.D. in petroleum engineering in Pennsylvania. In 1961 the husband returned to California, where he and the wife lived together until 1967. They had two children in California, and they also became United States citizens while in this State. In 1966 they purchased a home in California.

3. *Departure abroad.* In 1967 the husband accepted employment with an oil company in Libya. Every other year the parties took a repatriation leave to California, which they had officially designated as their place of permanent residence. The

parties remained in Libya until 1974, when they were forced to leave the country. At that time they again returned to California and purchased two parcels of unimproved real property.

The husband obtained employment with the Arabian American Oil Company and was sent to Saudi Arabia. The parties lived in Saudi Arabia until their separation in 1987. During this time they retained ownership of all their California property, and they continued to designate California as their permanent place of residence to Aramco. On his California driver's license the husband listed both California and Saudi Arabian addresses.

4. *Legal analysis.* The wife filed a dissolution of marriage action in California. The husband filed a motion to quash. The trial court found the above facts sufficient to justify personal jurisdiction over the husband, and the court of appeal denied the husband's writ petition. In its opinion the court observed that the wife had the burden of establishing jurisdiction over the husband. Then, after distinguishing *Kulko v. California Superior Court, supra*, 436 U.S. 84 based on the facts, the court of appeal wrote that the wife had met her burden by demonstrating the husband's numerous and diverse connections with California:

> These matters demonstrate that petitioner intentionally established numerous contacts with California. His diverse links with the state run the gamut from the personal to the professional to the commercial. Petitioner's deliberate connections and activities qualify as " 'extensive [and] wide-ranging' " (*Cornelison v. Chaney* (1976) 16 Cal.3d 143 . . . [citing and quoting *Buckeye Boiler Co. v. Superior Court* (1969) 71 Cal.2d 893 . . .] as well as "substantial . . . continuous and systematic.' " (*Id.* [citing and quoting *Perkins v. Benguet Mining Co.* (1952) 342 U.S. 437 . . .] Petitioner's ties evidence "act[s] by which [he] purposefully avail[ed him]self of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson v. Denckla* (1958) 357 U.S. 235 . . . ; see *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462 . . .) To this very day petitioner maintains certain minimal contacts with California.

5. *Facts in Khan distinguished.* A manifest difference exists between the extent of the connections in *Khan* and those in the present case. In *Khan*, the husband maintained significant family, business and economic connections with California throughout the marriage. In the present case, by contrast, Mr. Shimizu did not maintain such contacts.

E. *Decisions of other state jurisdictions summarized. Khan* is but one of numerous state court decisions which have struggled with the ramifications of *Kulko* in the family law setting. Like *Khan*, some of these cases have distinguished *Kulko* based on the extensive nature and quality of the contacts with the forum. On the other hand, many other decisions have followed the rule in *Kulko* not only because of the absence of minimum contacts between the defendant and the forum state [see, e.g., *Miles v. Perroncel* (La. 1992) 598 So.2d 662; *In re Marriage of Kramer* (Ill. 1992) 589 N.E.2d 951; *Long v. Tate* (Ala. 1990) 567 So.2d 326; *Crouch v. Crouch* (Mo. 1982) 641 S.W.2d 86] but also because of specific exceptions in the states' particular long-arm statutes [See, e.g., *Scoggins v. Scoggins* (Pa. 1989) 555 A.2d 1314; *Levy v. Levy* (1993) 592 N.Y.S.2d 480] or because of new jurisdictional rules that the state courts have developed on their own.

Some courts, for example, have held that a non-resident's employment activities within the forum state are not legally relevant to personal jurisdiction in a family law case. [See, e.g., *Hudgins v. Hudgins* (Ohio 1992) 602 N.E.2d 1172][13] Under this test Mr. Shimizu's three business trips to California would not be relevant, much less sufficient, for jurisdictional purposes. Other states have measured the proximity in time since the defendant

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[13] The Court of Appeals wrote in *Hudgins*: "[W]e find that appellant has not transacted 'business' in Ohio which would warrant the trial court's exercise of personal jurisdiction over appellant on the basis of his 'business' contacts. Although appellant enters Ohio several times a year as required by his employer for the purpose of maintaining data processing equipment, it is the employer who has potentially established business activity in Ohio. Thus, the employer, if anyone, has availed itself of the protection and the benefits of Ohio. . . ."

was previously a resident of the forum state, and these states have declined to find long-arm jurisdiction when the defendant's residence did not proximately proceed the commencement of the family law action. [See, e.g., *Bofonchik v. Smith* (Fla. 1993) 622 So.2d 1355] Under this criteria personal jurisdiction over Mr. Shimizu would be constitutionally precluded because he did not reside in California for over ten years. Finally, some states have interpreted *Kulko* to preclude a party from leaving the location where the family lived together as a family unit and suing in some other forum. [See, e.g., *Keller v. Keller* (S.Car. 1988) 373 S.E.2d 692] Under this standard *Kulko* would bar Ms. Bellah from invoking the jurisdiction of California, since the parties resided together for nine years in Japan before Ms. Bellah secretly departed with the parties' child.

CONCLUSION

Mr. Shimizu lacks sufficient contacts with California to justify jurisdiction under the California long-arm statute and the principles of *Kulko v. California Superior Court, supra*, 436 U.S. 84. The trial court should have quashed the instant proceedings. Mr. Shimizu respectfully requests this Court to grant certiorari in order to resolve the important continuing questions regarding the scope of personal jurisdiction in a family law case, and to reverse the injustice which has occurred here.

DATED: February 1, 1994

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COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE

FIRST APPELLATE DISTRICT

DIVISION: 1

SHIMIZU, MITSUO
vs.
SUPERIOR COURT, SONOMA COUNTY
BELLAH, JUDITH
AO63229
Sonoma County No. 931869

BY THE COURT:

The petition for writ of mandate/prohibition and the request for stay are denied.

Dated: OCT 13 1993

STRANKMAN, P.J P.J.

Trial Court:	Sonoma County Superior Court
Trial Judge:	The Honorable Laurence K. Sawyer

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First Appellate District, Division One, No. AO63229
SO35590

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

SUPREME COURT
FILED
NOV 24 1993

ROBERT WANDRUFF CLERK
Deputy

MITSUO SHIMIZU, Petitioner

v.

SONOMA COUNTY SUPERIOR COURT, Respondent

JUDITH BELLAH, Real Party In Interest

Petition for review DENIED

Arabian
Acting Chief Justice